

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JERMAINE ANTONIO JAMES,

Defendant-Appellant.

UNPUBLISHED

January 22, 2004

No. 244151

Wayne Circuit Court

LC No. 01-014170-01

Before: Fort Hood, P.J., and Bandstra and Meter, JJ.

PER CURIAM.

Defendant was convicted, following a jury trial, of felon in possession of a firearm, MCL 750.224f.¹ He was sentenced, as a habitual offender, second offense, MCL 769.10, to twenty-two months to ninety months' imprisonment. Defendant appeals as of right, and we affirm.

Defendant's conviction arose out of the shooting death of the victim. It was theorized that the victim was killed when he refused to surrender an expensive leather jacket.

Defendant first alleges that the prosecutor improperly admitted prior bad acts evidence without complying with the notice requirements of MRE 404(b). We disagree. A trial court's decision to admit evidence will be reversed only where there has been a clear abuse of discretion. *People v Crawford*, 458 Mich 376, 383; 582 NW2d 785 (1998). Review of the record reveals that defense counsel questioned a witness regarding defendant's prior relationship with the victim, and the prosecutor merely expanded upon this testimony on redirect examination. "Defendant cannot complain of admission of testimony which defendant invited or instigated." *People v Whetstone*, 119 Mich App 546, 554; 326 NW2d 552 (1982). By "opening the door" to this line of questioning, defendant cannot allege error or demonstrate injustice from the admission. *Id.*²

¹ Defendant was acquitted of felony-murder, MCL 750.316, and the lesser offense of second-degree murder, MCL 750.317, attempted armed robbery, MCL 750.529; MCL 750.92, and possession of a firearm during the commission of a felony, MCL 750.227b.

² Within the narrative portion of the discussion of this issue, defendant also alleges that trial counsel was ineffective for failing to object to admission of this evidence. This issue is not
(continued...)

Defendant next alleges that there was insufficient evidence to support the felon in possession of a firearm conviction. We disagree. To ascertain if there is sufficient evidence in a criminal case, this Court views the evidence in the light most favorable to the prosecution in determining whether a reasonable jury could have found that the elements of the crime were proven beyond a reasonable doubt. *People v Gonzalez*, 468 Mich 636, 640; 664 NW2d 159 (2003). The standard of review is deferential, with all reasonable inferences and credibility assessments drawn in support of the jury verdict. *Id.* at 640-641.

MCL 750.224f prohibits a person, who has been convicted of a specified felony, from possessing a firearm within five years of completion of the punishment imposed and until action to reinstate his firearm rights has occurred. The parties stipulated that defendant had been convicted of a specified felony and that five years had not elapsed. The prosecution presented uncontroverted evidence that defendant had not applied for or been granted a reinstatement of his firearm rights. The testimony of Florence Chenevert provided sufficient evidence from which a rational trier of fact could conclude, beyond a reasonable doubt, that defendant possessed a gun. The issue of the credibility of Chenevert's testimony was for the trier of fact, and we do not resolve credibility issues anew on appeal. *People v Milstead*, 250 Mich App 391, 404; 648 NW2d 648 (2002). Accordingly, this claim of error is without merit.

Lastly, defendant's challenge to the calculation of the scoring variables is without merit.³ A fact may be established for purposes of calculation of the guidelines even though it was not found for purposes of conviction. *People v Ratkov (After Remand)*, 201 Mich App 123, 126; 505 NW2d 886 (1993). The calculation may be based on criminal activity for which the defendant was acquitted. *People v Harris*, 190 Mich App 652, 663; 476 NW2d 767 (1991).⁴

Affirmed.

/s/ Karen M. Fort Hood
/s/ Richard A. Bandstra
/s/ Patrick M. Meter

(...continued)

preserved for appellate review because it was not raised in the statement of questions presented. MCR 7.212(C)(5); *People v Miller*, 238 Mich App 168, 172; 604 NW2d 781 (1999). Moreover, because defense counsel initiated this line of questioning, objection would have been futile, and trial counsel is not required to make frivolous or meritless objections. *People v Knapp*, 244 Mich App 361, 386; 624 NW2d 227 (2001).

³ Defendant did not comply with MCR 7.212(C)(7), requiring that he submit a copy of the presentence investigation report (PSIR) on appeal. See also *People v Lawrence*, 246 Mich App 260, 261 n 1; 632 NW2d 156 (2001). Nonetheless, we have addressed the merits of this issue because a copy of the page of the PSIR addressing the scoring is contained within the lower court record.

⁴ We also note that defendant alleges that he is entitled to additional days of credit for time served. This Court addressed this issue in an order dated July 14, 2003, instructing the parties to submit a stipulation to the trial court for amendment of the judgment of sentence.